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CAN THE ACCUMULATION OF GREAT WEALTH BE REGU- LATED BY TAXATION?

DISCUSSION OF THE AFFIRMATIVE BY ~~WILLIAM~~ AARON A.
FERRIS, OF CINCINNATI, AT THE ANNUAL MEET-
"ING OF THE OHIO STATE BAR ASSOCIA-
TION, AT PUT-IN-BAY, JULY 12, 1906.



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Mr. President and Members of the State Bar Association:

In his address delivered at the laying of the corner stone of the office building of the House of Representatives, April 14, 1906, President Roosevelt spoke these words:

"It is important to this people to grapple with the problems connected with the amassing of enormous fortunes, and the use of those fortunes, both corporate and individual, in business. We should discriminate in the sharpest way between fortunes well won and fortunes ill won; between those gained as an incident to performing great services to the community as a whole, and those gained in evil fashion by keeping just within the limits of mere law-honesty. Of course no amount of charity in spending such fortunes in any way compensates for misconduct in making them. As a matter of personal conviction, and without pretending to discuss the details or formulate the system, I feel that we shall ultimately have to consider the adoption of some such scheme as that of a progressive tax on all fortunes, beyond a certain amount, either given in life, or devised or bequeathed upon death to any individual—a tax so framed as to put it out of the power of the owner of one of these enormous fortunes to hand on more than a certain amount to any one individual; the tax, of course, to be imposed by the National and not the State Government. Such taxation should, of course, be merely aimed at the inheritance or transmission in their entirety of those fortunes swollen beyond all healthy limits."

Whether these words of the president inspired the committee in charge to formulate the question under discussion, it is not material to inquire. In any event the subject is one which has arrested the attention of every thoughtful person concerned in the welfare of the human race, and who really is striving for the permanency of Republican institutions.

What, then, prompted the committee to bring before this association for consideration, a subject so big with importance: in some respects so novel, and in every way so difficult of answer? It may be assumed that the committee, alive as to the questions of the day; on the alert as to possible perils confronting the American people, has felt, and rightly, that the State Bar Association of Ohio was a safe body to consider and throw light upon any question involving civil and political rights.

The first thought that arises, suggests the inquiry: Is there any peril in sight, or to be foretold from any experience, that would warrant any interference with, or regulation of, the accumulation of wealth, great or small?

In a recent issue of the *New York World* (June 13), a paper noted for statistics, there appeared a carefully prepared article, with the heading: "*Rockefeller fortune will be twenty-five billions, seven hundred and thirty-two millions of dollars (\$25,732,000,000) if John D. lives to be one hundred years old. * * * almost three times as much gold and silver as there is in circulation in banks and in all the treasure houses and mints on earth to-day.*"

This article goes on to state:

"Nobody knows just how much Mr. Rockefeller is worth at the present time. It is doubtful whether he himself could give an estimate that was not a million or two off the mark. Careful investigators have computed his wealth at \$615,000,000, within the past few weeks, and this figure is believed to be as accurate as it possibly can be.

"In 1905 Mr. Rockefeller was worth \$550,000,000, showing a gain for the present year of \$65,000,000. In 1900 he had only \$400,000,000, and the year before that he was poorer still, \$250,000,000 representing his total wealth. In 1885 he had \$100,000,000, in 1875 \$5,000,000, in 1872 \$1,000,000, in 1870 \$50,000, in 1865 \$5,000, and in 1855 not a solitary penny. During the past 51 years his fortune has increased from nothing at all to \$615,000,000.

*The average
of the
1855-1905
is \$1,200,000*

"It has been repeatedly declared that Mr. Rockefeller is already a billionaire, this estimate of his fortune being based on the value of his holdings in Standard Oil and other interests. As a rule these estimates may often be regarded with security as fictitious, being founded more on inflated than actual values. So for that reason it is more reasonable to take the most conservative estimate of Mr. Rockefeller's fortune, which places his present wealth at \$615,000,000.

"Mr. Rockefeller has over 33 years to live before he reaches his one-hundredth birthday. During that time it is reasonable to suppose that his millions will be entitled to a natural growth, just the same as every other person's money grows when it is judiciously invested and carefully guarded.

"From 1905 to 1906 the natural growth of his millions added \$65,000,000 to the principal. Year after year at this rate the natural growth should become gradually larger and larger, until, when Mr. Rockefeller is 99 years old, the mere interest on his money should be \$2,757,000,000 in one year—over four times as much as he is worth at the present time."

Take the figures given as a conservative estimate of his fortune to-day, cut them in two, and divide by ten, and still his fortune would be indecently large, irrational, and beyond all wholesome needs or requirements.

A half century ago, a citizen of the United States, with property worth a million dollars, was considered a phenomenon. One could have counted the millionaires in this broad land on the fingers of one hand. How is it now? It is probable that there are at present more millionaires in the Senate of the United States, and of greater wealth, than there were in all of the states together fifty years ago.

Within the last twenty-five years, colossal fortunes have been piled up by individuals, and at a rate that is appalling. Enormous salaries, beyond the powers of any man to earn, and out of all reason, have been paid to this and that official of private corporations. And what conditions, moral, civil and political confront the American nation at this, the threshold of the twentieth century? How will the future historian write it down, when he comes to tell of those conditions? Will he narrate, that it was an age distinguished for its men of letters; for its achievements in art, or architecture; for its men noted for statesmanship; for its religious fervor? No! he must record that we were a nation gone mad in the pursuit of money;

that it was an age distinguished for the nurture and development of trusts; celebrated for the great army of grafters in political and civil life; for its abuse of corporate franchises, public and private; for the corruption and degradation of municipal government; for the absence of political virtue; for its tendency to forget and ignore the lessons in civil liberty handed down by our forefathers; and for sowing the seeds of socialism and anarchy!

No one would have the temerity for a moment to contend that Mr. Rockefeller or any of the multi-millionaires of his class acquired his fortune through superior skill, extraordinary and unremitting labor, or through superlative wisdom, single-handed and alone. It need not be averred that he has acquired it through dishonest dealings, as that term is used in every-day English. But he has amassed it through fortuitous manipulation of public and private corporations, by a skillful process of stock-watering; by methods of absorption and elimination—absorbing of formidable rivals, and by the suppression and wiping out of the more insignificant and smaller operators; by stifling competition; through the modern monstrosity of the trust. And the state has made it possible and easy for the individual to pile up fortunes, swollen to unhealthy proportions, and beyond the dreams of avarice.

Stopping for a moment to inquire how this modern development has come to pass, it will be interesting to note a few of the facts. That the trust is of modern growth, and that the abuse of public and private franchises is of very recent date, needs no extended research.

Those delegates from the states, who compiled the Articles of Confederation, apparently had no dictionary containing the word corporation. So, too, the Federal Constitution, that splendid example of organic law, nowhere mentions the term "corporation." Coming to Ohio, the Constitution of 1802 contains not one word about the organization of corporations. The nearest approach to any reference to corporations, occurs in Article VIII, Section 27, under the Title Bill of Rights, where it is provided—

"That every association of persons, when regularly formed within this state, and having given themselves a name, may,

on application to the Legislature, be entitled to receive letters of incorporation, to enable them to hold estates, real and personal, *for the support of their schools, academics, colleges, universities, and for other purposes.*"

Great abuses grew up under this Constitution in the way of special privileges, and the Constitution of 1851 followed, with the broad provision, that "Corporations may be formed under general laws," and with the added proviso for double liability. But the double liability provision has now been abrogated; and with no proper safe-guards in the general statutes, the bars have all been let down; and, from no corporations we have gone with a bound to incorporations for everything, great and small, except "for carrying on professional business." The doctor, the lawyer, the school-teacher, and the preacher of the gospel, are barred, in Ohio, from becoming incorporated for business purposes!

section

The ~~quotation~~ assigned here for discussion puts the verb in the potential form. "Can the Accumulation of Great Wealth be Regulated by Taxation?"

Before advancing argument on the proposition whether it is *possible* so to regulate the accumulation, it would perhaps be well briefly to consider it in the subjunctive form—as to whether it would be *advisable* so to regulate great wealth.

It needs no citation of authority in support of the proposition that the state or nation should do anything to protect and preserve itself. Society without government is anarchy. Granted that perils confront the state, whether they be political, civil, moral or international, it must be conceded that the duty of the state is to put promptly in motion every force and means at command to avert the danger. There are evidences enough that grave perils now confront the American nation; that the signs of unrest and discontent are manifest; that corruption, permeating almost every branch of business and municipal government, is dulling the public conscience and sapping the moral fibre of the present and the rising generations. Surely it is not an overwrought imagination which foresees danger impending over American institutions—to be traced for the most part to the insane rush for and the accumulation of great wealth.

If it is the duty of the nation to defend itself from perils, there must be a lawful way of accomplishing that defense. Motive is the basis for every offense against moral or civil law. When a man violates the moral law, he does so through some anticipated pleasure resulting. If he robs his neighbor, he expects thereby to reap some supposed benefit. Make impossible the realization of his hopes and the motive will disappear. The accumulation of great hordes of money, follows the desire for it, and being a menace to Republican institutions, can taxation regulate it and thereby avert the danger?

TAXATION THE REMEDY.

How can the state ~~press~~^{express} the madness of mankind for the accumulation of colossal wealth? The answer is, make it less easy to accumulate; revise completely the whole corporation law, which now permits incorporation for practically every purpose in business, with nine parts of water to one of substance, and then allows the corporation to run and manipulate with comparatively no supervision. And then, what is perhaps most important of all, compel the corporation and the individual to pay his just proportion of taxes. It is notorious that our laws are lamentably weak both as respects special and unrestricted privileges granted by the state through corporate franchises, and through an imbecile system of taxation. Does any one suppose that Mr. Rockefeller pays his just proportion of taxes as an individual; or that any of the corporations in which he is interested pays its just part of taxes for the support of government? Is there a corporation in existence anywhere, or a multi-millionaire, who pays the taxes he should pay according to law? If there be such a corporation or individual the American people would like to know its or his name, and erect a monument in memory. It stands to reason that if the laws for taxation were wisely made, and rigidly enforced, one great impediment to the piling up of immeasurable wealth would be established.

Montesquieu, in his *Spirit of Laws*, says (Book 13, Vol. 1):

“The public revenues are a portion that each subject gives of his property, in order to secure, or enjoy the remainder.
 . . . Nothing requires more wisdom and prudence than

the regulation of that portion of which the subject is deprived, and that which he is suffered to retain. The public revenues should not be measured by the people's abilities to give, but by what they ought to give."

Further on this writer continues:

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 "It is a general rule that taxes may be heavier in proportion to the liberty of the subject, and that there is a necessity for reducing them in proportion to the increase of slavery. This has always been and always will be the case. It is a rule derived from Nature that never varies. We find it in all parts, in England, Holland, and in every state where liberty gradually declines, we come to Turkey." (Book 13, p. 247.)

Article I, Section 8, of the Federal Constitution provides that "the Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States."

This is a very broad provision of constitutional law. And there is to be found in the Constitution no limitation upon this power of taxation.

The Constitution of Ohio, Article XII, Section 2, provides that—

"Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money."

And there is no limitation in the present Constitution upon the power of taxation, except that it be uniform.

Mr. Justice Story, in his Treatise on the Constitution (Sec. 965), asserts broadly the power to tax for other purposes than for revenue, and says:

"The absolute power to levy taxes includes the power in every form in which it may be used, and for every purpose to which the Legislature may choose to apply it. This results from the very nature of such an unrestricted power. *A fortiori* it might be applied by Congress to purposes for which the nations have been accustomed to apply it. Now, nothing is more clear from the history of commercial nations, than the fact that the taxing power is often, very often, applied for other purposes than revenue. It is often applied as a regulation of commerce. It is often applied as a virtual prohibition

upon the importation of particular articles, for the encouragement and protection of domestic products and industries; for the support of agriculture, commerce and manufactures; for a retaliation upon foreign monopolies and injurious restrictions; for mere purposes of state policy and domestic economy; sometimes to banish a noxious article of consumption; sometimes as a bounty upon an infant manufacture or agricultural product; sometimes as a suppression of particular employments; sometimes as a prerogative power to destroy competition and secure a monopoly to the government."

Judge Cooley, in his work on Taxation, recognizes all these purposes for taxation, and, in addition, asserts the power to tax for moral obligations.

Chief Justice Marshall, in the great case of *McCullough v. Maryland* (4 Wheat., 316), involving the constitutionality of the law incorporating the Bank of the United States, in rendering the opinion, quotes from the preamble of the Constitution those inspired words, where it is declared that:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity,"

and further citing the clause relating to the enumeration of powers conferred upon the Congress where it is provided that the Congress shall have the power of making "all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department thereof," uses these words:

"The Government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means. . . . Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

The fundamental rule for taxation, as laid down by Adam Smith (*Wealth of Nations*, Bk. 5, Ch. 2, Art. 4) is, that—

"The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in propor-

tion to their respective abilities; that is, in proportion to the revenues which they respectively enjoy under the protection of the state. The expense of government to the individuals of a great nation, is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their respective interests in the estate."

John Stuart Mill (*Pol. Econ.*, Bk. 2, Ch. 2) says:

"I see nothing objectionable in fixing a limit to what any one may acquire by the mere favor of others, without any exercise of his faculties, and in requiring that if he desires any further accession of fortune, he shall work for it."

The English government has, for many years, imposed an income and a succession tax. By the Succession Act, of August, 1894 (57 and 58 Vict., Ch. 30), a graded rate of taxation of estates was fixed, varying from one pound on estates of one hundred pounds and not exceeding five hundred pounds, to eight pounds per hundred on estates of 1,000,000 pounds and over.

We have in Ohio the tax on collateral inheritance; and it is to be deplored that the law taxing direct inheritance has been repealed. But the beneficial workings of this law have been fully demonstrated.

It will doubtless be contended that the state has no right to regulate the accumulation of wealth by taxation, on the ground that to do so would interfere with individual liberty, and would tend to repress individual effort. It would be an insuperable objection to such regulation, if lawful and healthy ambition were thereby to be stifled. But there is a well recognized line of distinction between liberty and license. The state does not hesitate to enact laws restraining and punishing the violation of moral and civil law. Freedom of speech is a fundamental right. But it must not be interpreted to mean that a man has the right to libel and slander his neighbor. It permits a man to gratify his appetites. But it forbids that he shall make a beast of himself. If, then, the individual, availing himself of the powers and privileges which the state has given him for the acquirement of wealth, proceeds to make a glutton of himself by piling up wealth out of all proportion to his possible needs, the needs of his family, and the demands of society, thereby promoting the cause of

anarchy, and imperiling the existence of the state, shall not the state interfere and say to the individual: Thus far shalt thou go and no farther?

Suppose for a moment, that the individual, with his accumulated billions, should take upon himself to buy up all the lands in a state or territory. There is no law against his doing so. Would not the state have the power, and would it not be an imperative duty, to place a limit upon his acquisitions.

The conclusion is, therefore, that the state can regulate the accumulation of great wealth by taxation: and it is the duty of the state promptly to take steps in that direction, to the end that justice may be established: that the general welfare may be promoted: and that the blessings of liberty may be secured to ourselves and our posterity.

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